

First Day Motion Guidelines for Chapter 11 Cases

Revised: Thursday, May 2, 2019

First Day Motion Guidelines

(Effective June 1, 2019)

1) Where a Debtor-in-Possession or a Trustee requires relief upon or shortly after the filing of a petition for relief under Chapter 11, it may file motions seeking such relief on an expedited basis (the "First Day Motions"). First Day Motions may include, but are not limited to, requests to: maintain existing banking accounts and cash management systems; maintain and set adequate assurance for utility companies; honor customer deposits and obligations; pay pre-petition debts to service and product providers (i.e., critical vendors); pay prepetition payroll; and use cash collateral. The Debtor-in-Possession or Trustee must support all First Day Motions with admissible evidence and must otherwise comply with B.L.R. 9013-1. An omnibus declaration in support of the First Day Motions is acceptable, so long as the declarant is competent to attest to all relevant facts. See B.L.R. 9013-1(d)(2)..

2) If the Debtor-in-Possession or Trustee would like the court to convene a hearing on its First Day Motions on the date that its files its petition for relief, counsel for the Debtor-in-Possession or Trustee must, once the petition has been filed, contact the chambers of the assigned judge to schedule a hearing on the First Day Motions. If the First Day Motions will not be heard until after the petition date, counsel for the Debtor-in-Possession or Trustee must, as soon as practicable after the filing of the petition, contact the chambers of the assigned judge to advise of the coming First Day Motions, and to obtain a hearing date and time. Counsel shall also inquire whether the assigned judge wants chambers copies of the First Day Motions. Counsel for the Debtor-in-Possession or Trustee also must notify the assigned judge's law clerk(s) and the United States Trustee of the First Day Motions by email or by telephone.

3) Should the assigned judge want chambers copies of the First Day Motions, counsel for the Debtor-in-Possession or Trustee must deliver a complete set of chambers copies to the assigned judge's chambers on the day the First Day Motions are filed. Chambers copies shall be delivered in 3-ring binders not to exceed 2". Each pleading and each exhibit in each binder must be included in an index inserted as the first page in each binder and must be clearly marked with tabs.

4) The court encourages counsel for the Debtor-in-Possession or Trustee to make the court aware in advance of any new case that will require significant court involvement at its outset including, but not limited to, adjudication of First Day Motions.

5) First Day Motions requesting authority to use cash collateral and/or approval of post-petition financing shall comply with Rules 4001 (b), (c) and (d) of the Federal Rules of Bankruptcy Procedure. Counsel also must comply with the court's Guidelines for Cash Collateral and Financing Stipulations..

6) Any relief granted at the initial hearing on any First Day Motions is preliminary and subject to further order at subsequent hearing(s).

7) If an interested party wishes to appear by telephone at the hearing(s) on the First Day Motions, that party must comply with the court's Policy and Procedure for Appearances by Telephone, which is available on the court's website.

8) Attorneys who are not admitted to practice in the Northern District of California must comply with Civil L.R. 11-3 (incorporated by B.L.R. 1001-2(a)). Pro hac vice admission should be sought as soon as practicable, but is not required prior to the initial hearing on First Day Motions.

9) Any order submitted after hearing on a First Day Motion must be accompanied by a service list that complies with B.L.R. 9022-1(a).

10) Any party affected by a First Day Order or any party in interest may file a motion to modify

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any First Day Order under these Guidelines, except an order entered pursuant to 11 U.S.C. §§ 363 and 364 applicable to the use of cash collateral and/or court approval of post-petition financing. The motion must be filed not less than twenty-one days after entry of the First Day Order on the ECF docket. In any contested hearing on such a motion, the Debtor has the burden of proof on the propriety of the relevant First Day Order.

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